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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 09/980/955
Filing Date: December 4,2001
Appellant(s): Beale Marc

Peter Venscroft Wilkins
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/29/10 appealing from the Office action mailed 06/14.10.

**(1) Real Party in Interest**

The above-identified application is assigned, in its entirety, to Koninklijke Malvern Scientific Solutions Limited ( a British Company), the assignee of record.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The summary of claimed subject matter contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

Vayda et al. (5,745,717) 04-1998; MvCloud (5,808,567) 09-1998; Kinawi et al. (6,545,669) 03-1998.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1,3,6-9,12,14,16-20,22,25-29,31-33,35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Vayda et al (5,745,717)** in view of McCloud (5,808,567).

As to claims 1,20,22, 25,39 **Vayda et al (here in after Vayda),** discloses a communication system comprising: means defining a communication region having associated therewith a plurality of symbols (figs.3-6,8-11.For example see fig.5 "*EDIT,PRINT, TOOLS,SET-UP*" (col.6, lines 23-45) and being responsive to a user controlled pointing device (fig.7 (713)) whereby a desired symbol can be selected by detecting movement of the pointing device along a predetermined bearing with the communication region (col.7, lines 9-34), being offset relative to the location of the symbol to be selected (col.7, lines 35-44,see where the symbols "*EDIT,PRINT, TOOLS,SET-UP"* are angularly separated and tolerance (or offset) is inherent in such latitude of movement).

**Vayda** teaches system being responsive to said user-controlled pointing device independent of the location within said communication region at which movement along said predetermined bearing commences (col. 4, lines 41-45).

Vayda does not disclose the predetermined bearing being substantially parallel to a direction of the desired symbol of the like relative to a central region of the communication region.

McCloud teaches the predetermined bearing being substantially parallel to a direction of the desired symbol of the like relative to a central region of the communication region (in reference movement from letter A to G is parallel to movement from E to H)(figs. 10-11, col. 9, lines 40-57).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate teachings of McCloud into Vayda reference in order to input information into a large variety of different electronic devices (col. 1, lines 51-53 in the McCloud reference).

Notice that finger on touch pad, mouse are user-controlled pointing device independent of the location within said communication region at which movement along said predetermined bearing commences versus key board dependable on location.

As to claim 39, McCloud teaches defining a plurality of communication regions each substantially in the form of a square having symbols associated therewith substantially at comers of the square and substantially midway along each side of the square, each communication region (in reference letters A to G)(fig. 10).

As to claims 3, 6-8, **Vayda** discloses a plurality of symbol entry regions are provided each having associated therewith a plurality of symbols (fig. 5 *EDIT, PRINT, TOOLS,SET-UP* ) and each being responsive to the user-controlled pointing device

whereby a desired symbol can be selected by movement of the pointing device along the predetermined bearing within the region with which the desired symbol is associated (see, col7, lines 9-44).

As to claim 9, **Vayda** furthermore teaches two sets of communication regions are provided (for example see fig.5 (*EDIT, PRINT*))**.**

As to claims 12 and 31, **Vayda** teaches means is provided for selecting further symbols or the like by employing a different form of movement form that require to select from the basic symbols (see, col.15, lines 35-46 , col.16, lines 41-50,"using scrolling" , col.17, lines 15-67).

In regard to claims 14,31-33, **Vayda** the symbols or the like may be selected on the basis of the speed of movement of the pointing device (col.7, lines 35-44) or combination of movements (see, col.15, lines 35-46 , col.16, lines 41-50,"using scrolling" , col.17, lines 15-67). It is obvious that the selection is based on how fast you move the input device.

As to claims 16-18, 35-37, **Vayda** teaches that the combination movement includes a linear movement in a first direction that is and/or end thereof or reversing the first direction (for example see, fig.5. linear movement direction to select "EDIT' and then in reverse direction to select "TOOL") or two sequential linear movements at a predetermined angle to each other (fig.11, two sequential linear movements "A" and "F").

As to claims 19 and 38, **Vayda** teaches that the region or the regions are touch screen (see, fig.7, col.16, lines 41-50).

As to claims 26,27,28,29,40 **Vayda** discloses having three communication regions, each regions having associated therewith a plurality of symbols (fig.11 "ABCDEF"; "GHIJK" etc.), a desired symbol or the like being selected by movement within the region having the desired symbol or the like associated therewith in a predetermined direction relative to the desired symbol or the like (for example in fig.11 symbols "A" ,"B", "C" or "D" can be selected within the region).

2. Claims 11 and 13,30 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Vayda**, McCloud in view of **Kinawi et al** (6,545,669)

As to claims 11 and 13,30, **Vayda** also discloses means is provided for selecting a further symbol or the like arranged within an area encompassed by each region (see, fig.11 (ABCDF), col.10, lines 30-42).

**Vayda**, McCloud do not expressly detailed the selection is done by **tapping** the area within the desired region.

However, the patent of **Kinawi et al** clearly states that it is well known for touch screen display system to select symbols by tapping the desired region (see, col.2, lines 7-20, col.5, lines 51-63).

It would have been obvious to one skill in the art at the time of the invention was made to have been motivated to substitute **Kinawi e**t al. tapping method of selecting an object with **Vayda**,McCloud system of selection system in order to manipulate objects (col. 1, lines 9-15 in **Kinawi e**t al. reference).

**(10) Response to Argument**

On page 11-12 of Appeal brief, Appellant's stated in relation to independent claim 1 that (1) Appellant's claims require movement along a bearing parallel to a direction of the desired symbol relative to a central region of the communication region; and (2) Appellant's claims require that the system be responsive to the user-controlled pointing device independent of the location within the communication region at which movement along the predetermined bearing commences. With regard to reason ( 1 ), according to the *Shorter Oxford English Dictionary,* for example, the word "parallel" means "lying or extending alongside of one another and always at the same distance apart." Consequently, a bearing that is parallel to a direction based on a central region of the communication region cannot pass through that central region, but instead must lie or extend alongside the central region. This is obviously contrary to the requirement of Vayda et al. that movement must always start from a central focus position. At no point do Vayda et al. teach or suggest that movement should, or could, start from a position alongside the central focus position. With further regard to reason (1), Vayda et al. never use the word "parallel," but instead consistently use the word "radial." However, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

On page 13 of Appeal brief, Appellant's stated in relation to

independent claim 1 that McCloud does not select symbols as a result of move\-ment in a *radial* direction, as required by Vayda et al. And McCloud does not select symbols as a result of movement along a bearing *parallel* to a direction of the desired symbol relative to a central region of the communication region, as required by the present invention. Rather, McCloud requires movement in a *direction perpendicular* to the plane of the communication region in order to apply sufficient pressure to make a contact and to operate a switch pad. However, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

On page 14 of Appeal brief, Appellant's stated in relation to independent claim 1 that proposed combination of references movement from a focus position at letter A will not select letter H; and movement that does not start from a focus position will not select any letter. Therefore, with letter A as the focus position, and moving toward letter G, Vayda et al. is devoid of any teaching for selection of the letter H. The Examiner's contrary suggestion is clearly in error - and is clearly the result of an impermissible hindsight reconstruction. However, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed

invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

On page 16 of Appeal brief, Appellant's stated in relation to independent claim 1 that There is simply no disclosure in Vayda or McCloud, *taken alone or together* (emphasis added), of either: movement along a bearing which is parallel to a direction of the desired symbol relative to a central region of the communication region; or symbol selection independent of the location within the communication region at which movement along the bearing commences." However, combination of Vayda and McCloud teaches these limitations, as pointed above and also rejection on page 3 stated that finger on touch pad, mouse are user-controlled pointing device independent of the location within said communication region at which movement along said predetermined bearing (any directions) commences versus key board dependable on location.

The same arguments will apply to the rest of the independent claims.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Leonid Shapiro/

Examiner, Art Unit 2629

AU 2629

March 10,2011

/Richard Hjerpe/

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